

DEPARTMENT OF COMMERCE

International Trade Administration

A-570-905

Initiation of Antidumping Duty Investigation: Certain Polyester Staple Fiber from the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: (Insert date of publication in the Federal Register)

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INITIATION OF INVESTIGATION

The Petition

On June 23, 2006, the Department of Commerce ("Department") received a petition on imports of certain polyester staple fiber (PSF) from the People's Republic of China ("PRC") filed in proper form by Dak Americas LLC., Nan Ya Plastics Corporation America, and Wellman, Inc. ("Petitioners"). The period of investigation ("POI") is October 1, 2005, through March 31, 2006.

In accordance with section 732(b) of the Tariff Act of 1930, as amended ("the Act"), Petitioners alleged that imports of certain polyester staple fiber from the PRC are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring and threaten to injure an industry in the United States. The Department issued supplemental questions to Petitioners on June 28, 2006,

and Petitioners filed their response on July 3, 2006.

Scope of Investigation

The merchandise subject to this proceeding is synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The subject merchandise may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture.

The following products are excluded from the scope: (1) PSF of less than 3.3 decitex (less than 3 denier) currently classifiable in the Harmonized Tariff Schedule of the United States ("HTSUS") at subheading 5503.20.0025 and known to the industry as PSF for spinning and generally used in woven and knit applications to produce textile and apparel products; (2) PSF of 10 to 18 denier that are cut to lengths of 6 to 8 inches and that are generally used in the manufacture of carpeting; and (3) low-melt PSF defined as a bi-component fiber with an outer, non-polyester sheath that melts at a significantly lower temperature than its inner polyester core (classified at HTSUS 5503.20.0015).

Certain PSF is classifiable under the HTSUS subheadings 5503.20.0045 and 5503.20.0065. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under the orders is dispositive.

Comments on Scope of Investigation

During our review of the petition, we discussed the scope with Petitioners to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as

discussed in the preamble to the Department's regulations, we are setting aside a period for interested parties to raise issues regarding product coverage. See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997). The Department encourages all interested parties to submit such comments within 20 calendar days of publication of this initiation notice. Comments should be addressed to Import Administration's Central Records Unit in Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230 - Attention: Alex Villanueva, Room 4003. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with interested parties prior to the issuance of the preliminary determination.

Determination of Industry Support for the Petition

Section 732(b)(1) of the Act requires that a petition be filed by an interested party described in subparagraph (C), (D), (E), (F) or (G), or on behalf of the domestic industry. In order to determine whether a petition has been filed by or on behalf of the industry, the Department, pursuant to section 732(c)(4)(A) of the Act, determines whether a minimum percentage of the relevant industry supports the petition. A petition meets this requirement if the domestic producers or workers who support the petition account for: (i) at least 25 percent of the total production of the domestic like product; and (ii) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Moreover, section 732(c)(4)(D) of the Act provides that, if the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the

Department shall: (i) poll the industry or rely on other information in order to determine if there is support for the petition, as required by subparagraph (A), or (ii) determine industry support using a statistically valid sampling method.

Section 771(4)(A) of the Act defines the “industry” as the producers as a whole of a domestic like product. Thus, to determine whether a petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (“ITC”), which is responsible for determining whether “the domestic industry” has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to a separate and distinct authority. In addition, the Department’s determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to law. See USEC, Inc. v. United States, 132 F. Supp. 2d 1, 8 (CIT 2001), citing Algoma Steel Corp. Ltd. v. United States, 688 F. Supp. 639, 644 (1988), aff’d 865 F.2d 240 (Fed. Cir. 1989), cert. denied 492 U.S. 919 (1989).

Section 771(10) of the Act defines the domestic like product as “a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this title.” Thus, the reference point from which the domestic like product analysis begins is “the article subject to an investigation,” (i.e., the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition).

With regard to the domestic like product, the Petitioners do not offer a definition of

domestic like product distinct from the scope of the investigation. Based on our analysis of the information submitted on the record, we have determined that certain polyester staple fiber constitutes a single domestic like product and we have analyzed industry support in terms of that domestic like product. For a discussion of the domestic like product analysis in this case, see the Antidumping Investigation Initiation Checklist: Certain Polyester Staple Fiber from the People's Republic of China ("PRC"), Industry Support at Attachment I (Initiation Checklist), on file in the Central Records Unit, Room B-099 of the main Department of Commerce building.

Our review of the data provided in the petition, supplemental submissions, and other information readily available to the Department indicates that Petitioners have established industry support representing at least 25 percent of the total production of the domestic like product, and more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition, requiring no further action by the Department pursuant to section 732(c)(4)(D) of the Act. Therefore, the domestic producers (or workers) who support the petition account for at least 25 percent of the total production of the domestic like product, and the requirements of section 732(c)(4)(A)(i) of the Act are met. Furthermore, the domestic producers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition. Thus, the requirements of section 732(c)(4)(A)(ii) of the Act also are met. Accordingly, the Department determines that the petition was filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act. See Initiation Checklist at Attachment I (Industry Support).

The Department finds that Petitioners filed the petition on behalf of the domestic industry

because they are an interested party as defined in sections 771(9)(E) and (F) of the Act and they have demonstrated sufficient industry support with respect to the antidumping investigation that they are requesting the Department initiate. See Initiation Checklist at Attachment I (Industry Support).

Export Price

Petitioners relied on two U.S. prices for certain polyester staple fiber manufactured in the PRC and offered for sale in the United States. The prices quoted were for a specific grade and quality of PSF falling within the scope of this petition, for delivery to the U.S. customer within the POI. Petitioners deducted from the prices the costs associated with exporting and delivering the product, including U.S. inland freight, ocean freight and insurance charges, U.S. duty, port and wharfage fees, foreign inland freight costs, and foreign brokerage and handling.

Petitioners also calculated a margin based on the weighted average unit value data for the POI of imports from the PRC under HTSUS numbers 5503.20.0045 and 5503.20.0065.

Petitioners deducted charges and expenses associated with exporting and delivering the product to the customer in the United States from the CIF price, which included ocean freight and insurance charges, foreign inland freight costs, and foreign brokerage and handling.

Normal Value

Petitioners stated that the PRC is a non-market economy (“NME”) and no determination to the contrary has yet been made by the Department. In previous investigations, the Department has determined that the PRC is a NME. See Notice of Final Determination of Sales at Less Than Fair Value: Magnesium Metal from the People's Republic of China, 70 FR 9037 (February 24, 2005), Notice of Final Determination of Sales at Less Than Fair Value: Certain Tissue Paper

Products from the People's Republic of China, 70 FR 7475 (February 14, 2005), and Notice of Final Determination of Sales at Less Than Fair Value: Certain Frozen and Canned Warmwater Shrimp from the People's Republic of China, 69 FR 70997 (December 8, 2004). In accordance with section 771(18)(C)(i) of the Act, the presumption of NME status remains in effect until revoked by the Department. The presumption of NME status for the PRC has not been revoked by the Department and remains in effect for purposes of the initiation of this investigation. Accordingly, the normal value (“NV”) of the product is appropriately based on factors of production valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of the PRC’s NME status and the granting of separate rates to individual exporters.

Petitioners selected India as the surrogate country. Petitioners argued that, pursuant to section 773(c)(4) of the Act, India is an appropriate surrogate because it is a market-economy country that is at a comparable level of economic development to the PRC and is a significant producer and exporter of polyester staple fiber. Based on the information provided by Petitioners, we believe that its use of India as a surrogate country is appropriate for purposes of initiating this investigation. After the initiation of the investigation, we will solicit comments regarding surrogate country selection. Also, pursuant to 19 CFR 351.301(c)(3)(i), interested parties will be provided an opportunity to submit publicly available information to value factors of production within 40 days after the date of publication of the preliminary determination. Petitioners provided three dumping margin calculations using the Department's NME methodology as required by 19 CFR 351.202(b)(7)(i)(C) and 19 CFR 351.408. Petitioners

calculated normal values based on consumption rates for producing polyester staple fiber experienced by U.S. producers. In accordance with section 773(c)(4) of the Act, Petitioners valued factors of production, where possible, on reasonably available, public surrogate country data. To value certain factors of production, Petitioners used official Indian government import statistics, excluding those values from countries previously determined by the Department to be NME countries and excluding imports into India from Indonesia, the Republic of Korea and Thailand, because the Department has previously excluded prices from these countries because they maintain broadly-available, non-industry specific export subsidies. See Automotive Replacement Glass Windshields From the People's Republic of China: Final Results of Administrative Review, 69 FR 61790 (October 21, 2004), and accompanying Issues and Decision Memorandum at Comment 5.

For inputs valued in Indian rupees and not contemporaneous with the POI, Petitioners used information from the wholesale price indices (“WPI”) in India as published by the Reserve Bank of India (RBI) for input prices during the period preceding the POI. In addition, Petitioners made currency conversions, where necessary, based on the average rupee/U.S. dollar exchange rate for the POI, as reported on the Department’s website.

For the normal value calculations, Petitioners derived the figures for factory overhead, selling, general and administrative expenses (“SG&A”), and profit from the financial ratios of an Indian producer of certain PSF, Reliance Industries Limited.

Fair Value Comparisons

Based on the data provided by Petitioners, there is reason to believe that imports of certain polyester staple fiber from the PRC are being, or are likely to be, sold in the United States

at less than fair value. Based upon comparisons of export price to the NV, calculated in accordance with section 773(c) of the Act, the estimated calculated dumping margins for certain polyester staple fiber from the PRC range from 87.43 percent to 108.98 percent.

Allegations and Evidence of Material Injury and Causation

Petitioners allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. Petitioners contend that the industry's injured condition is illustrated by the decline in customer base, market share, domestic shipments, prices and financial performance. We have assessed the allegations and supporting evidence regarding material injury and causation, and we have determined that these allegations are properly supported by adequate evidence and meet the statutory requirements for initiation.

See Initiation Checklist at Attachment II (Injury).

Separate Rates and Quantity and Value Questionnaire

The Department recently modified the process by which exporters and producers may obtain separate-rate status in NME investigations. See Policy Bulletin 05.1: Separate-Rates Practice and Application of Combination Rates in Antidumping Investigations involving Non-Market Economy Countries (Separate Rates and Combination Rates Bulletin), (April 5, 2005), available on the Department's Website at <http://ia.ita.doc.gov>. The process requires the submission of a separate-rate status application. Based on our experience in processing the separate rates applications in the antidumping duty investigations of Certain Artist Canvas from the People's Republic of China and Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea, we have modified the application for this

investigation to make it more administrable and easier for applicants to complete. See Initiation of Antidumping Duty Investigations: Certain Lined Paper Products from India, Indonesia, and the People's Republic of China, 70 FR 58374, 58379 (October 6, 2005), Initiation of Antidumping Duty Investigation: Certain Artist Canvas From the People's Republic of China, 70 FR 21996, 21999 (April 28, 2005) and Initiation of Antidumping Duty Investigations: Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea, 70 FR 35625, 35629 (June 21, 2005). The specific requirements for submitting the separate-rates application in this investigation are outlined in detail in the application itself, which will be available on the Department's Website at <http://ia.ita.doc.gov/ia-highlights-and-news.html> on the date of publication of this initiation notice in the Federal Register. The separate rates application is due no later than September 19, 2006.

NME Respondent Selection and Quantity and Value Questionnaire

For NME investigations, it is the Department's practice to request quantity and value information from all known exporters identified in the petition. In addition, the Department typically requests the assistance of the NME government in transmitting the Department's quantity and value questionnaire to all companies who manufacture and export subject merchandise to the United States, as well as to manufacturers who produce the subject merchandise for companies who were engaged in exporting subject merchandise to the United States during the period of investigation. The quantity and value data received from NME exporters is used as the basis to select the mandatory respondents. Although many NME exporters respond to the quantity and value information request, at times some exporters may not

have received the quantity and value questionnaire or may not have received it in time to respond by the specified deadline.

The Department requires that the respondents submit a response to both the quantity and value questionnaire and the separate-rates application by the respective deadlines in order to receive consideration for separate-rate status. This procedure will be applied to this and all future investigations. See Certain Artist Canvas from the People's Republic of China, 70 FR at 21999, Diamond Sawblades and Parts Thereof from the People's Republic of China and the Republic of Korea, 70 FR at 35629, Initiation of Antidumping Duty Investigation: Certain Activated Carbon from the People's Republic of China, 71 FR 16757, 16760 (April 4, 2006).

Appendix I of this notice contains the quantity and value questionnaire that must be submitted by all NME exporters no later than August 18, 2006. In addition, the Department will post the quantity and value questionnaire along with the filing instructions on the IA Website:

<http://ia.ita.doc.gov/ia-highlights-and-news.html>. The Department will send the quantity and value questionnaire to those exporters identified in Exhibit General-4 of the petition and the NME government.

Use of Combination Rates in an NME Investigation

The Department will calculate combination rates for certain respondents that are eligible for a separate rate in this investigation. The Separate Rates and Combination Rates Bulletin, states:

{w}hile continuing the practice of assigning separate rates only to exporters, all separate rates that the Department will now assign in its NME investigations will be specific to those producers that supplied the exporter during the period of

investigation. Note, however, that one rate is calculated for the exporter and all of the producers which supplied subject merchandise to it during the period of investigation. This practice applies both to mandatory respondents receiving an individually calculated separate rate as well as the pool of non-investigated firms receiving the weighted-average of the individually calculated rates. This practice is referred to as the application of “combination rates” because such rates apply to specific combinations of exporters and one or more producers. The cash-deposit rate assigned to an exporter will apply only to merchandise both exported by the firm in question and produced by a firm that supplied the exporter during the period of investigation.

Separate Rates and Combination Rates Bulletin, at page 6.

Initiation of Antidumping Investigation

Based upon our examination of the petition on certain polyester staple fiber from the PRC, we find that this petition meets the requirements of section 732 of the Act. Therefore, we are initiating an antidumping duty investigation to determine whether imports of certain polyester staple fiber from the PRC are being, or are likely to be, sold in the United States at less than fair value. Unless postponed, we will make our preliminary determinations no later than 140 days after the date of these initiations.

Distribution of Copies of the Petition

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of the petition has been provided to the government of the PRC.

International Trade Commission Notification

We have notified the ITC of our initiation, as required by section 732(d) of the Act.

Preliminary Determination by the ITC

The ITC will preliminarily determine, within 25 days after the date on which it receives notice of this initiation, whether there is a reasonable indication that imports of certain polyester staple fiber from the PRC are causing material injury, or threatening to cause material injury, to a U.S. industry. See section 733(a)(2)(A)(i) of the Act. A negative ITC determination will result in the investigation being terminated; otherwise, this investigation will proceed according to statutory and regulatory time limits.

This notice is issued and published pursuant to section 777(i) of the Act.

David M. Spooner
Assistant Secretary
for Import Administration

Date

APPENDIX I

Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Tariff Act of 1930 (as amended) permits us to investigate 1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or 2) exporters and producers accounting for the largest volume and value of the subject merchandise that can reasonably be examined.

In the chart below, please provide the total quantity and total value of all your sales of merchandise covered by the scope of this investigation (see scope section of this notice), produced in the PRC, and exported/shipped to the United States during the period October 1, 2005, through March 31, 2006.

Market	Total Quantity	Terms of Sale	Total Value
United States			
1. Export Price Sales			
2. a. Exporter name b. Address c. Contact d. Phone No. e. Fax No.			
3. Constructed Export Price Sales			
4. Further Manufactured			
Total Sales			

Total Quantity:

- Please report quantity on a metric ton basis. If any conversions were used, please provide the conversion formula and source.

Terms of Sales:

- Please report all sales on the same terms (e.g., free on board).

Total Value:

- All sales values should be reported in U.S. dollars. Please indicate any exchange rates used and their respective dates and sources.

Export Price Sales:

- Generally, a U.S. sale is classified as an export price sale when the first sale to an unaffiliated person occurs before importation into the United States.
- Please include any sales exported by your company directly to the United States.

- Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please **do not** include any sales of merchandise manufactured in Hong Kong in your figures.

Constructed Export Price Sales:

- Generally, a U.S. sale is classified as a constructed export price sale when the first sale to an unaffiliated person occurs after importation. However, if the first sale to the unaffiliated person is made by a person in the United States affiliated with the foreign exporter, constructed export price applies even if the sale occurs prior to importation.
- Please include any sales exported by your company directly to the United States.
- Please include any sales exported by your company to a third-country market economy reseller where you had knowledge that the merchandise was destined to be resold to the United States.
- If you are a producer of subject merchandise, please include any sales manufactured by your company that were subsequently exported by an affiliated exporter to the United States.
- Please **do not** include any sales of merchandise manufactured in Hong Kong in your figures.

Further Manufactured:

- Further manufacture or assembly costs include amounts incurred for direct materials, labor and overhead, plus amounts for general and administrative expense, interest expense, and additional packing expense incurred in the country of further manufacture, as well as all costs involved in moving the product from the U.S. port of entry to the further manufacturer.